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September 12, 2008

BY E-FILING, E-MAIL & HAND DELIVERY

DM 3

The Honorable Vincent J. Poppiti
Blank Rome LLP
1201 N. Market Street, Suite 800
Wilmington, DE 19801

Re: *Honeywell International Inc., et al. v. Apple Computer, Inc., et al.*
C.A. Nos. 04-1337-JJF, 04-1338-JJF, 04-1536-JJF, 05-874-JJF

Dear Special Master Poppiti:

I am writing briefly with regard to Your Honor's determination of a schedule for the remainder of the case, and in response to Mr. Rovner's letter from last evening (D.I. 1183) and the letters from Sony and Apple served this afternoon.

First, the Manufacturer Defendants continue to suggest that Honeywell wishes to delay trial in this matter. Nothing could be further from the truth. Honeywell is prepared to move forward under either proposed schedule – or an amalgamation of the two – in order to bring this matter to an efficient and fair conclusion in July 2009. It is for that reason that Honeywell submits that it is critical that the trial proceed upon a *complete* record. In this regard, Honeywell is troubled that the Manufacturer Defendants allot as much, if not more, time to dispositive motion practice and pretrial motions than they do the development of the commercial success record and the expert reports on infringement and damages. Honeywell fully understands that the dependence of the schedule upon Judge Farnan's *Markman* decision, and upon the actions of the Customer Defendants, may necessitate tightening its proposed schedule and even include some form of double tracking. However, Honeywell submits that Your Honor should be guided by the principals of giving precedence and allotting the greatest portion of time, to development and completion of the record on issues which previously had been stayed.

It was in the spirit of balancing the need for a complete record and the need for an expeditious schedule that Honeywell proposed alternatives to formal discovery, including a stipulation and/or agreement that the licenses would be admissible at trial. Agreements

regarding admissibility now would streamline or even moot Honeywell's need for the commercial success discovery, thus expediting the expert phase and the rest of the schedule. Importantly, the Manufacturer Defendants cite *Iron Grip*, a case that relates to the *weight*, not the *admissibility*, of licenses; *i.e.*, the licenses were part of the actual record considered by the fact finder. None of the cases cited by the Manufacturer Defendants stands for the proposition that licenses should be excluded from the record merely because they relate to litigation. By way of its alternative proposals, Honeywell in no way seeks to constrain Defendants' ability to place the licenses in whatever context they feel appropriate; rather, Honeywell simply wants to ensure its access to a fundamental part of the record in order to alleviate one of the two main contingencies in the schedule.

With regard to the letters from Sony and Apple, we note that the arguments set forth therein are simply a variation on the theme that is already being addressed in the informal proceedings ongoing since May of this year. It stands to reason that if it is determined that some or all of Sony's/Apple's activities are not covered by the corresponding licenses, it is because those licensees/suppliers chose not to fully indemnify them, contrary to the assumptions underpinning both the case law cited in the letter and Judge Jordan's original ruling. Honeywell will be prepared to fully address these arguments at next week's hearing but observes that it is difficult to envision that a sophisticated company like Sony - who analyzed Honeywell's '371 patent and entered into a detailed license regarding it in 2006 - would face any difficulty in evaluating Judge Farnan's *Markman* ruling in the time allowed.

We thank Your Honor for the opportunity to offer these brief additional comments, and are available for a hearing on Tuesday, September 16, 2008, 4:30 to 6:30 p.m.

Respectfully,

/s/ Thomas C. Grimm

Thomas C. Grimm (#1098)

TCG
cc: Dr. Peter T. Dalleo, Clerk (by hand)
All Counsel of Record (by e-filing and/or e-mail)
(see attached Certificate of Service)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 12, 2008, the foregoing was caused to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered participants.

In addition, the undersigned hereby certifies that true and correct copies of the foregoing were caused to be served via electronic mail on September 12, 2008 upon the following parties:

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The undersigned also hereby certifies that on September 15, true and correct copies of the foregoing were caused to be served by hand, in triplicate, upon the Special Master:

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